

REMARKS:

Claims 1-19 are in the application. No Claim stands allowed. Claims 13-19 have been cancelled by the present response.

Claims 1, 2, 4, and 13 are objected to based on informalities in the Claims.

First, Claim 1 is objected to because "the meaning of the phrase packages for containers" is unclear. Claim 1 has been amended to change "for" to read "or" as was originally intended.

Second, Claim 2 is objected to because the meaning of the phrase "a blend of between about 25% and about 75% by weight, of the blend" is unclear. Claim 2 has been amended to recite "a blend of between about 25% and about 75% by weight polymethylpentene with the remainder being polypropylene".

Third, Claim 4 is objected to because the meaning of the phrase "a thickness of between about 3 and 10 lbs/ft² is unclear..." Claim 4 has been amended to change "thickness" to read "coat weight".

Fourth, Claim 13 has been cancelled.

In view of the above noted amendments to Claims 1, 2, and 4, it is respectfully suggested that the objections to these Claims be withdrawn.

Claims 1-3, 6, 9-14 and 18-19 stand rejected under 35 USC §102(b) as being anticipated by Kiang ("the 941 patent). Claims 13-19 have been cancelled.

With regard to Claim 1, Kiang is stated by the Examiner to disclose

(1) a laminate (multilayer structure; column 7, lines 20-21)

(2) useful in the manufacture of

containers for food products (column 7, lines 17-18)

comprising

(3) a paperboard substrate (a coextrusion is applied to paperboard; column 7, lines 7-8)

(4) and a food contact release layer

comprising

(a) polymethylpentene (exterior

PMP layer exhibits superior food release, therefore a

food container layer; column 7, lines 15-19,

(5) the laminate being ovenable (column 7, lines 15-19).

Further Kaing is stated as disclosing

(6) that the polymethylpentene comprises
a polymethylpentene homopolymer

(column 6, lines 39-42) and

(7) that the copolymer is a copolymer of

polymethylpentene with propylene (column 6, lines 29-35) and

“is therefore polypropylene; the food

contact release layer is therefore a blend of polyethylpentene and

polypropylene and is bonded to one side of the substrate (column 7, lines 20-27).

“When the defense of lack of novelty is based on a printed publication that is asserted to describe the same invention, a finding of anticipation requires that the publication describe all of the elements of the claims, arranged as in the patented device”

C.R. Bard Inc. v M3 Systems, Inc. 48 USPQ2d 1225, 1230

Citing: Shearing v. Iolab Corp. 24 USPQ2d 1133 (Fed. Cir. 1992); Richardson v. Suzuki Motor Co. 9 USPQ2d 1913 (Fed Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp; 2211 USPQ 673 (Fed. Cir. 1984.)

The attached Table I sets forth the elements of Applicant's Claim 1 in the order of their claimed arrangement with a listing of those elements which the Examiner has extracted from Kiang as being the same as the elements set forth in Claim 1. A review of Table I reveals that Kiang fails to disclose the critical element of Claim 1 which calls for “a food contact release layer comprising a blend of polymethylpentene and polypropylene bonded to one side of said substrate”.

Further to Table I, the Examiner notes that “Kiang discloses that the polymethylpentene comprises a polymethylpentene homopolymer (column 7, lines 49-42) and that the copolymer is a copolymer of polyethylpentene with propylene (column 6, lines 29-35) and is therefore a polypropylene; the food contact release layer is therefore a blend of polymethylpentene and polypropylene and is bonded to one side of the substrate (column 7, lines 20-27).

Applicants respectfully take exception to the Examiner's characterization of the disclosure of Kiang. First, it is to be recalled that Applicants are claiming a laminate in which there is a substrate (paperboard) onto one surface (the food contact surface) of which there is bonded a BLEND of polymethylpentene and propylene which defines a food contact release layer. Contrariwise, Kiang discloses a laminate wherein the substrate contains a layer of ONLY PMP as the food contact surface. As stated by Kiang at column 7, lines 31 et seq. this outer PMP layer being possibly by reason of the ADHESIVE blends disclosed by Kiang,

"For constructions which are to be exposed to food cooking temperatures, a high melting polyolefin resin, such as homopolymers and copolymers of 4MP1, would preferably be employed. A preferred construction of this type would be PMP/paperboard/tie/EVOH/tie/PMP."

The tie layers of this construction are adhesive blends disclosed by Kiang.

Again at column 7, lines 7 et seq., Kiang states:

"In a particularly useful embodiment of the invention, a five-layer coextrusion is applied to paperboard. The five-layer coating coextruded onto the paperboard has a PMP layer in contact with the paperboard, an interlayer of the adhesive blend, an EVOH barrier layer, another interlayer of adhesive blend, and a final layer of PMP. Such constructions are graphically depicted paperboard/ PMP/tie/EVOH/tie/PMP. The exterior PMP layer imparts food grease and oil resistance to these constructions and also exhibits superior food release properties rendering such laminates highly useful for the construction of formed ovenable food containers".

"In addition to the foregoing, composite multi-layer structures of the type paperboard/tie/EVOH/tie/PMP can be produced with the adhesive blends of the invention".

Thus, contrary to the Examiner's contention, Kiang does not disclose a food contact release layer comprising a "blend of polymethylpentene and polypropylene bonded to one side of said substrate" as set forth in Claim 1. Rather, Applicants claim a blend of two homopolymers: polymethylpentene and polypropylene, whereas Kiang discloses a homopolymer of 1-polymethylpentene blended with a copolymer consisting of two monomers; 1-methylpentene and polypropylene "for adhering 4-methylpentene-1

polymers and vinyl alcohol polymers.

It is thus respectfully submitted that Applicants' invention as set forth in Claim 1 is not anticipated by Kiang in that Kiang, fails to disclose that element of Claim 1 which calls for "a food release layer comprising a blend of polymethylpentene and polypropylene bonded to one side of said substrate".

Withdrawal of the rejection of Claim 1 as being anticipated by Kiang under 35 USC §102(b) is respectfully requested.

Claims 3,6, and 9-12 also stand rejected as being anticipated under 35 USC §102(b) by Kiang.

Each of Claims 3,6, and 9-12 is dependent, either directly or indirectly upon Claim 1 and therefore inherits each and every element of their parent claim and any intervening claim(s). Allowance of these dependent Claims is urged for the same reasons, among others, as set forth hereinabove in discussing Claim 1.

Withdrawal of the rejection of Claims 3,6, and 9-12 as being anticipated by Kiang under 35 USC §102(b) is respectfully requested.

Claims 2 and 16 stand rejected under 35 USC §103(a) as being unpatentable over Kiang. Claim 16 has been cancelled.

At the outset, the Examiner states that Kiang discloses a laminate comprising a food contact layer of polymethylpentene and polypropylene as discussed above. In response, Applicant notes that Kiang discloses a blend of a homopolymer of polymethylpentene and a copolymer, the latter consisting of two monomers,; namely, 1-methylpentene and propylene. Kiang then teaches that such blend is an adhesive for adhering polymethylpentene to an EVOH layer. (see column 6, lines 23 et seq.). This teaching, in fact, has no material relationship to a "food release layer" comprising a blend of polymethylpentene and propylene as claimed by Applicant.

Moreover, the surface tension of a blend of a homopolymer of polymethylpentene and a copolymer consisting of two monomers, namely, 1-methylpentene and propylene, as taught by Kiang, would readily be recognized by one skilled in the art as being materially different from the surface tension claimed by Applicant, this being a consequence of the different materials which make up the Kiang adhesive blend and the materials which make up the food contact release layer claimed by Applicants.

Still further, not only does Kiang fail to disclose that the "food contact layer" comprises a blend of about 75%, by weight, of the blend, of polymethylpentene with the remainder being polypropylene, as suggested by the Examiner, Kiang most importantly fails to disclose a blend which is a "food contact release" layer. Rather, Kiang teaches one skilled in the art that PMP needs an adhesive to bond the PMP to EVOH or the like, the PMP itself being the food contact release layer. Contrariwise, in Applicants' claimed invention, the food contact layer is a blend.

Claim 2 is dependent upon Claim 1 and allowance of Claim 2 is urged also for the reasons set forth in discussing Claim 1.

It is therefore, respectfully submitted that Kiang neither teaches, suggests nor discloses Applicants' claimed "food contact layer comprising a blend of polymethylpentene and propylene". Withdrawal of the rejection of Claim 2 as being unpatentable under 35 USC§103(a) is respectfully requested.

Claim 4 stands rejected under 35 USC §103(a) as being unpatentable over Kiang in view of Lorence (the '016 patent). Kiang is cited as disclosing "a laminate comprising paperboard having a food contact layer as discussed above", with Lorence being cited as teaching a food contact layer for a paperboard having a basis weight of between 3 and 10 lbs/3000 ft².

Claim 4 is dependent on Claim 1. The inapplicability of Kiang to the patentability of Claim 1 is noted hereinabove and attention is invited to such discussions. Particularly, the failure of Kiang as the primary reference in a combination of Kiang with Lorence is respectfully submitted to be inappropriate in view of the failure of Kiang to either teach, suggest or disclose a "food contact release layer comprising a blend of polymethylpentene and polypropylene bonded to one side of said substrate".

Thus, irrespective of what Lorence teaches with respect to a paperboard substrate suitable for use in combination with the teachings of Kiang, the failure of Kiang as a primary reference negates the combination of Kiang and Lorence as a basis for rejection of Claim 4 of the present application.

Withdrawal of the rejection of Claim 4 as being unpatentable under 35 USC §103(a) over Kiang in view of Lorence is respectfully requested.

Claims 5 and 15 stand rejected under 35 USC §103(a) as being unpatentable over Kaing in view of Shanton (the '375 patent). Again, the Examiner cites Kiang as disclosing "a laminate comprising paperboard as discussed above", with Shanton being cited as teaching "a paperboard laminate having a paperboard with a basis weight of between 18 and 320 lbs/3000 ft²."

Claim 15 has been cancelled.

Claim 5 is directly dependent on Claim 1. The inapplicability of Kiang to the patentability of Claim 1 is noted hereinabove and attention is invited to such discussions. As noted above, particularly, the failure of Kiang as the primary reference in a combination of Kiang with Lorence is respectfully submitted to be inappropriate in view of the failure of Kiang to either teach, suggest or disclose a "food contact release layer comprising a blend of polymethylpentene and polypropylene bonded to one side of said substrate".

Thus, irrespective of what Shanton teaches with respect to a paperboard substrate suitable for use in combination with the teachings of Kiang, the failure of Kiang as a primary reference negates the propriety of combining Kiang and Shanton as a basis for rejection of Claim 5 of the present invention.

Withdrawal of the rejection of Claim 5 as being unpatentable under 35 USC §103(a) over Kiang in view of Shanton is respectfully requested.

Claim 8 stand rejected under 35 USC §103(a) as being unpatentable over Kiang in view of Adur (the '295 patent). Claim 8 is directly dependent on Claim 6, which, in turn, is directly dependent on Claim 1. Claim 8, therefore inherits each and every one of the elements of Claims 1 and 6. The inapplicability of Kiang to the patentability of Claim 1 is noted hereinabove and attention is invited to such discussions. As noted above, particularly, the failure of Kiang as the primary reference in a combination of Kiang with Adur is respectfully submitted to be inappropriate in view of the failure of Kiang to either teach, suggest or disclose a "food contact release layer comprising a blend of polymethylpentene and polypropylene bonded to one side of said substrate".

Thus, irrespective of what Adur teaches with respect to a paperboard substrate suitable for use in combination with the teachings of Kiang, the failure of Kiang as a

primary reference negates the combination of Kiang and Adur as a basis for rejection of Claim 8 of the present application.


Withdrawal of the rejection of Claim 8 as being unpatentable under 35 USC §103(a) over Kiang in view of Adur is respectfully requested.

Accordingly, allowance of Claim 8 is urged for the same reasons, among others, as set forth hereinabove in discussing Claims 1 and 6.

As noted, Claims 13-19 have been cancelled.

Reconsideration of the application and allowance of Claims 1-12, as amended, are respectfully requested.

Respectfully submitted,
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